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Before the  
Federal Communications Commission  
Washington, D.C. 20554

RECEIVED

JUL 25 2005

In the Matter of

Reclassification of License of )  
FM Station KJEL ) RM-10567  
(Lebanon, Missouri) )

Federal Communications Commission  
Office of Secretary

TO: Federal Communications Commission  
Attn: Chief, Audio Division

PETITION FOR RECONSIDERATION

Four Him Enterprises, L.L.C. ("Four Him"), licensee of KHZR (formerly KHCR), Channel 249C3, Potosi, Missouri, files this Petition for Reconsideration of the *Memorandum Opinion and Order* ("Order"), released June 24, 2005. The *Order* denied Four Him's Petition for Reconsideration challenging the dismissal of Four Him's Rulemaking in this proceeding. Four Him files this further Petition for Reconsideration based on changed circumstances.<sup>1</sup> Four Him has entered into an agreement with Ozark Broadcasting, Inc. ("Ozark") which provides for complete resolution of this proceeding by allowing for the substitution of Channel 249C2 for Channel 249C3 in Potosi as contemplated in Four Him's Rulemaking Petition. *See*, attached Agreement.

Good cause exists to grant this Petition for Reconsideration. As more particularly set forth in the attached Settlement Agreement, Four Him and Ozark have reached an Agreement by which

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<sup>1</sup>Four Him's Petition for Reconsideration of the *Order* is proper since Four Him is raising new facts, not known or existing, since issuance of the Commission's *Order*. The salient new facts are that Four Him and Ozark have entered into an agreement whereby Ozark agrees to a C0 downgrade. *See, Infinity Broadcasting* 19 FCC Rcd 20156 at Paragraph 3 (2004) (action on second Petition for Reconsideration) and cases cited therein: *see also, In re Flexibility in the 218 to 219 MHz Service*, 17 FCC Rcd 8520 (2002) (Order on Second Petition for Reconsideration), *Sioux Valley Rural Television v. FCC* 349 F.3d 667 (DC Circuit 2004). List ABCDE

No. 5 of 60000 rec'd  
List ABCDE

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Ozark agrees to modification of its license for KJEL to operate on 279C0 instead of 279C in exchange for certain consideration. In its Petition for Rulemaking filed on April 23, 2001, Four Him proposed the substitution of Channel 249C2 in lieu of Channel 249C3 in Potosi, Missouri, and modification of the KHZR license to reflect operation on the upgraded channel. In order to accommodate the upgrade, certain channel substitutions were necessary. Specifically, Four Him proposes to eliminate short spacing to KDAA, Rolla, Missouri, which currently operates on Channel 248A, by substitution of Channel 276A for 248A in Rolla.<sup>2</sup> The substitution in Rolla in turn causes two short spacings to two other facilities: an allotment on Channel 276A in Linn, MO, and Ozark's KJEL on 279C in Lebanon, MO. The short spacing to Channel 276A in Linn can be eliminated by substitution of Channel 248A for Channel 276A. The short spacing to KJEL is eliminated by the reclassification of KJEL as a C0 facility operating on Channel 279C0 instead of its current licensed operation on Channel 279C.

In response to Four Him's Petition for Rulemaking, the Commission issued an *Order to Show Cause* on September 20, 2002, seeking comment on why KJEL should not be downgraded to operate as a C0. Ozark was not served a copy of the *Show Cause Order* by registered mail and did not file a timely response. It did file a Motion to Accept Late Filed Opposition to Order to Show Cause indicating that it received no actual notice and intended to file an application to maintain its Class C status. Subsequently, Ozark filed a Modification Application seeking authorization to operate as a full Class C station. The Commission has since accepted and granted the application (BPH-20030401ABZ).

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<sup>2</sup>Four Him will reimburse KDAA its reasonable and prudent costs for the channel switch as provided by Commission rules.

In the Commission's recently released *In Re: Revision of Procedures Governing Amendments to FM Table of Allotments, MB Docket Number 05-210* (released June 14, 2005) (*Procedures Order*) the Commission announced a 90 day settlement window to allow for resolution of pending Rulemakings. During this settlement window, the Commission is holding in abeyance its rules prohibiting payment of certain consideration in settlement of Rulemaking proceedings. The *Procedures Order* states that settlements are to be limited to proceedings in which NPRM's have been released. This should be no bar to grant of the relief requested. No further NPRM need to be issued or Comments filed in order to grant the relief requested by the parties. Although no NPRM has been issued in RM-10567, the Comment and Notice provision has already passed with respect to the proposal advanced by Four Him in its Petition for Rulemaking. In a Rulemaking<sup>3</sup> filed by Ozark on May 22, 2001, nearly a month after Four Him's Rulemaking Petition, Ozark proposed the allocation of Channel 276C3 to Eminence, MO, which conflicts with the proposed substitution of Channel 276A for 248A in Rolla, MO, requested by Four Him. In response to the NOPR issued in the Eminence, MO, Rulemaking, Four Him filed a Counterproposal on September 4, 2001, ("Counterproposal") requesting the exact same upgrade for KHZR and channel substitutions as proposed in its Petition for Rulemaking. In its Counterproposal, Four Him also requested that Channel 281A be allocated to Eminence, MO. As noted in the attached Agreement, Ozark has agreed to withdrawal its request for allocation of 276C3 of Eminence, MO.<sup>4</sup> There is no impediment

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<sup>3</sup>See, *NOPR (Eminence, Missouri)* MM Docket No. 01-151; RM-10167 (July 13, 2001)

<sup>4</sup>The attached Agreement between Ozark and Four Him also provides for complete resolution of the Eminence Rulemaking. Ozark has agreed to withdraw its request for allocation of 276C3 to Eminence and to support Four Him's Counterproposal. Four Him reiterates its intent to apply for, construct, and operate on channel 249C2 if allocated, and will apply for and construct channel 281A if the channel is allocated to Eminence and Four Him's application is granted.

therefore to grant the channel allocations as proposed in Four Him's Petition for Rulemaking or Counterproposal.<sup>5</sup> Therefore, it is requested that Four Him's Petition for Reconsideration be granted and that its request for channel substitutions as proposed in its Petition for Rulemaking or Counterproposal be granted. Specifically, Four Him requests the following change in the Table of Allocations:

	<u>Present</u>	<u>Proposed</u>
Potosi, Missouri	249C3	249C2
Rolla, Missouri	248A	276A
Linn, Missouri	276A	248A
Lebanon, Missouri	279C	279C0
Eminence, Missouri	--	281A <sup>6</sup>

See, attached Engineering Statement. Grant of this Petition for Reconsideration is in the public interest by completely resolving two Rulemakings (RM-10567 and RM-10167) thereby conserving Commission and party resources.

\* \* \* \* \*

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<sup>5</sup>As noted, Four Him believes its Rulemaking Petition should be granted since it has been fully advanced in its Counterproposal in the Eminence Rulemaking proceeding. However, to the extent necessary, Four Him requests waiver of Commission's rules limiting payment of consideration in resolution of Rulemaking proceedings. The Rulemakings in both the Potosi Rulemaking and the Eminence Rulemakings were filed long ago and none of the parties could have filed for the purpose of receiving payment in exchange for dismissal. Four Him also notes that if for whatever reason the Commission determines that the Commission cannot grant the Potosi Rulemaking or Eminence Counterproposal the way is now clear to issue an NOPR.

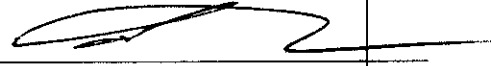
<sup>6</sup>Site restricted see Engineering Exhibit 2 attached to Four Him's Counterproposal. In the event the Commission chooses not to add 281A to Eminence, Four Him requests that the Rulemaking proceed nonetheless by allocation of 249C2 in lieu of 249C3 to Potosi.

-- 5 --

Respectfully submitted,

FOUR HIM ENTERPRISES, L.L.C.

By



A. Wray Fitch III  
Timothy R. Obitts  
Its Attorneys

GAMMON & GRANGE, P.C.  
8280 Greensboro Drive, 7th Floor  
McLean, VA 22102  
(703) 761-5000

July 25, 2005

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**CERTIFICATE OF SERVICE**

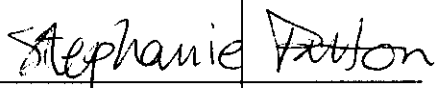
I, Stephanie Patton, in the law offices of Gammon & Grange, P.C., hereby certify that I have sent copies of the foregoing PETITION FOR RECONSIDERATION this 25<sup>th</sup> day of July 2005, by first-class, postage prepaid, U.S. Mail to the following:

John A. Karousos, Chief, Allocations Branch  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W., Room 3A-266  
Washington, D.C. 20554

KDAA-KMOZ, L.L.C.  
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(Counsel for Ozark Broadcasting, Inc.)

Ozark Broadcasting, Inc.  
P.O. Box 430  
Moberly, MO 65270

  
Stephanie Patton

ENGINEERING STATEMENT IN  
SUPPORT OF PETITION  
FOR RECONSIDERATION

RM-10567

CHANNEL 249C2 - POTOSI, MO

Four Him Enterprises, LLC  
Potosi, MO

July 22, 2005

Prepared for: Mr. Michael Fallon  
Four Him Enterprises, LLC  
4600 Executive Center Parkway  
Suite A  
St. Peters, MO 63376

**CARL E. SMITH CONSULTING ENGINEERS**

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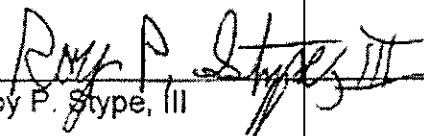


ENGINEERING AFFIDAVIT


State of Ohio                     )  
  ) ss:  
County of Summit                )

Roy P. Stype, III, being duly sworn, deposes and states that he is a graduate Electrical Engineer, a qualified and experienced Communications Consulting Engineer whose works are a matter of record with the Federal Communications Commission and that he is a member of the Firm of "Carl E. Smith Consulting Engineers" located at 2324 North Cleveland-Massillon Road in the Township of Bath, County of Summit, State of Ohio, and that the Firm has been retained by Four Him Enterprises, LLC to prepare the attached "Engineering Statement In Support of Petition for Reconsideration - RM-10567 - Channel 249C2 - Potosi, MO."

The deponent states that the Exhibit was prepared by him or under his direction and is true of his own knowledge, except as to statements made on information and belief and as to such statements, he believes them to be true.

  
\_\_\_\_\_  
Roy P. Stype, III

Subscribed and sworn to before me on July 22, 2005.

  
\_\_\_\_\_  
Nancy A. Adams  
Notary Public

/SEAL/

NANCY A. ADAMS, Notary Public  
Residence - Cuyahoga County  
State Wide Jurisdiction, Ohio  
My Commission Expires Sept. 5, 2005

\_\_\_\_\_  
CARL E. SMITH CONSULTING ENGINEERS

## ENGINEERING STATEMENT

This engineering statement is prepared on behalf of Four Him Enterprises, LLC, licensee of Radio Station KHZR(FM) - Potosi, Missouri, in support of a *Petition for Re-consideration* in RM-10567, which proposes to amend the FM Table of Allotments to upgrade KHZR to a Class C2 facility. It documents that, even with the intervening changes in the FM allotment situation since this rulemaking proposal was originally filed in 2001, the channel substitutions proposed in this rulemaking petition, as originally filed, remain valid to accomplish the proposed KHZR upgrade.

Table 1.0 is an FM allocation study for Channel 249C2, which was conducted from the reference site 4.7 kilometers northwest of Potosi which was originally specified in this rulemaking proposal. The geographic coordinates of this site are:

NL - 37° 58' 30"

WL - 90° 48' 30"

As shown in this table, operation on Channel 249C2 from this site would be short spaced to both the licensed and construction permit sites for KDAA - Rolla, Missouri, which operates on Channel 248A.<sup>1,2</sup>

The short spacing to KDAA can be eliminated by substituting another channel for Channel 248A in Rolla. Table 1.1(a) is an FM allocation study for Channel 276A in

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<sup>1</sup>Pursuant to the rounding provisions of Section 73.208(c)(8) of the FCC Rules, the 78.74 kilometer spacing to KYKY - St. Louis, Missouri is considered to comply with the required spacing of 79 kilometers.

<sup>2</sup>The data contained in the FCC's Consolidated Database System appears to indicate that the proposed use of Channel 249C2 in Potosi would also be short spaced to a vacant allotment on Channel 247A in Arcadia, Missouri. This appears to be the result of a database error, however, as the the Report and Order in MM Docket 97-168 allotted Channel 280A to Arcadia and not Channel 247A, which was an alternate proposal in this proceeding. This was confirmed by the FCC in their March 17, 2000 Memorandum Opinion and Order in MM Docket 97-168, which clarified this situation by correcting a typographic error in the original Report and Order in this proceeding.

Rolla which was conducted from licensed KDAA transmitter site. Similarly, Table 1.1(b) is an FM allocation study for Channel 276A which was conducted from the KDAA construction permit site. As shown in these tables, operation on Channel 276A from either of these sites would still be short spaced to three other facilities requiring protection consideration:

NEW(CP)	Linn, MO	Channel 276A
KJEL	Lebanon, MO	Channel 279C
Rulemaking	Eminence, MO	Channel 276C3

The short spacing to Channel 276A in Linn can still be eliminated by substituting another channel for Channel 276A in Linn. Table 1.2 is an FM allocation study for Channel 248A in Linn which was conducted from the site specified in the recently granted construction permit (BNPH-20041230ADD) for this allotment. As shown in this table, operation on Channel 248A from this site would be short spaced to the present operation of KDAA on Channel 248A. As noted above, however, KDAA would be moved from Channel 248A to Channel 276A to accommodate the allotment of Channel 249C2 to Potosi. Thus, this short spacing should not be a problem, since Channel 248A will be deleted from Rolla if Channel 249C2 is allotted to Potosi, as proposed herein. An examination of this table also shows that operation on Channel 248A from this site would meet the required spacing to the proposal to allot Channel 249C2 to Potosi.

This rulemaking proposal originally proposed to trigger a Class C0 downgrade for KJEL to eliminate the short spacing between KJEL and the use of Channel 276A in Rolla. Although KJEL has opposed such a downgrade and presently has an application (BPH-20030401ABZ) pending for a construction permit to increase its antenna

height to maintain full Class C status, a settlement agreement has been reached which will result in the dismissal of this application and the downgrade of KJEL to a Class C0 facility, which will eliminate this short spacing and permit the substitution of Channel 276A for Channel 248A in Rolla at either KDAA's licensed site or the site specified in its construction permit.

The rulemaking proposal to allot Channel 276C3 to Eminence, Missouri was initiated by the filing of a rulemaking petition by the licensee of KJEL after the filing of the KHZR rulemaking petition. The settlement agreement which has been reached with the licensee of KJEL to dismiss its pending construction permit application and accept a Class C0 downgrade also specifies that they will withdraw the proposal to allot Channel 276C3 to Eminence, which should eliminate the short spacing between Channel 276A in Rolla and the proposed allotment of Channel 276C3 to Eminence. Even if it does not, however, the fact that the KHZR rulemaking proposal was filed prior to the Eminence rulemaking proposal makes it obvious that the KHZR proposal was timely filed to be considered as a counterproposal in the Eminence rulemaking proceeding (MM Docket 01-151).

The licensee of KHZR also filed timely comments in the Eminence rulemaking proceeding noting that this conflict could be eliminated by allotting Channel 281A to Eminence, rather than Channel 276C3, as originally proposed. Table 1.3 is an FM allocation study for Channel 281A, which was conducted from the originally specified site which is located 12.2 kilometers northwest of Eminence. The geographic coordinates of this site are:

NL - 37° 14' 30"  
WL - 91° 26' 00"

As shown in this table, operation on Channel 281A from this proposed site would still fully comply with the applicable spacing requirements to all other facilities requiring protection consideration.

In summary, Channel 249C2 can still be allotted to Potosi, Missouri in place of the present allotment on Channel 249C3, provided that Channel 276A is substituted for Channel 248A in Rolla, Missouri, Channel 248A is substituted for Channel 276A in Linn, Missouri, KJEL - Lebanon, Missouri is downgraded from Channel 279C to Channel 279C0, and Channel 276C3 is not allotted to Eminence, Missouri.

TABLE 1.0

FM ALLOCATION STUDY - CHANNEL 249C2 (97.7 MHz) - POTOSI, MO  
 -----  
 FOR HIM ENTERPRISES, LLC  
 POTOSI, MO

STUDY COORDINATES: 37/58/30 90/48/30

STATION	LOCATION	CHANNEL	CLASS	SPACING (km)	REQUIRED SPACING*	NOTES
KFTK	FLORISSANT, MO	246	C1	89.54	79.0	
KYRX	MARBLE HILL, MO	247	A	92.10	55.0	
KDAA	ROLLA, MO	248	A	83.13	106.0	1, 2, 3, 11
KDAA	ROLLA, MO	248	A	84.07	106.0	1, 3, 11
RULEMAKING	LINN, MO	249	A	110.65	106.0	10
WDLJ	BREESE, IL	246	A	142.43	106.0	
KOEA	DONIPHAN, MO	248	C2	153.93	130.0	
WBDA-FM	PITTSFIELD, IL	248	B1	178.33	134.0	
WBDA-FM	PITTSFIELD, IL	248	B1	181.15	134.0	2
KHZZ	POTOSI, MO	249	C3	4.38	177.0	3, 11
WGUL	WEST FRANKFORT, IL	249	A	166.68	166.0	
WYVR	PETERSBURG, IL	249	A	234.70	166.0	
KPOW-FM	LA MONTE, MO	249	C1	245.55	224.0	
WTRE-FM	TRENTON, TN	249	C2	269.16	190.0	1
KJSM-FM	AUGUSTA, AR	249	C1	314.96	224.0	
KFBD-FM	WAYNESVILLE, MO	250	C3	135.96	117.0	
KHXB	SIKESTON, MO	250	C2	149.33	130.0	1
KICK-FM	PALMYRA, MO	250	C2	206.74	130.0	
KTLO-FM	MOUNTAIN HOME, AR	250	C2	229.26	130.0	1
KYKY	ST. LOUIS, MO	251	C1	78.74	79.0	
KOZX	CABOOL, MO	251	A	149.88	55.0	
BIPH20010721AC	COLUMBIA, MO	252	C2	158.39	58.0	7

\* Required Spacing Per Section 73.207 of The FCC Rules

TABLE 1.0 (cont'd)

FM ALLOCATION STUDY - CHANNEL 249C2 (97.7 MHz) - POTOSI, MO  
 FOR HIM ENTERPRISES, LLC  
 POTOSI, MO

Notes:

1 - Applied For Under Section 73.213	7 - Pending Application
2 - Construction Permit	8 - Petition For Reconsideration
3 - Channel Deletion Proposed	9 - Proposed Rulemaking
4 - Move From This Channel Ordered	10 - Rulemaking Petition
5 - Move to This Channel Ordered	11 - Short-Spaced
6 - One Step Reference Site	12 - Vacant Allotment

TABLE 1.1(a)

## FM ALLOCATION STUDY - CHANNEL 276A (103.1 MHz) - ROLLA, MO

FOR HIM ENTERPRISES, LLC  
POTOSI, MO

STUDY COORDINATES: 37/57/50 91/45/54

STATION	LOCATION	CHANNEL	CLASS	SPACING (km)	REQUIRED SPACING*	NOTES
WIL-FM	ST. LOUIS, MO	222	C	132.81	29.0	
ALLOTMENT	MOUNTAIN GROVE, MO	223	A	101.45	10.0	12
KELE-FM	MOUNTAIN GROVE, MO	223	A	101.45	10.0	7
KNDY	WEST PLAINS, MO	273	C2	141.91	55.0	
KEZK-FM	ST. LOUIS, MO	273	C	143.03	95.0	
KOUL	LAKE OZARK, MO	274	A	71.61	31.0	
KMMO-FM	MARSHALL, MO	275	C1	101.68	133.0	
KMMO-FM	MARSHALL, MO	275	C1	105.57	133.0	1, 2
KEZS-FM	CAPE GIRARDEAU, MO	275	C1	203.92	133.0	
KHOZ-FM	HARRISON, AR	275	C1	214.49	133.0	
BNPH20041230AD	LINN, MO	276	A	60.31	119.0	2, 3, 11
RM10167	EMINENCE, MO	276	C3	89.50	142.0	3, 10, 11
KLOU	ST. LOUIS, MO	277	C1	142.84	133.0	
KLOU	ST. LOUIS, MO	277	C1	143.03	133.0	2
KWOZ	MOUNTAIN VIEW, AR	277	C	242.44	165.0	
KLUE	POPLAR BLUFF, MO	278	C2	177.42	55.0	
KJEL	LEBANON, MO	279	C	87.90	95.0	3, 11
KJEL	LEBANON, MO	279	C	87.90	95.0	3, 7, 11
KJEL	LEBANON, MO	279	C2	87.90	86.0	9

\* Required Spacing Per Section 73.207 of The FCC Rules



TABLE 1.1(a) (cont'd)

FM ALLOCATION STUDY - CHANNEL 276A (103.1 MHz) - ROLLA, MO  
-----  
FOR HIM ENTERPRISES, LLC  
POTOSI, MO

Notes:

- |                                      |                                  |
|--------------------------------------|----------------------------------|
| 1 - Applied For Under Section 73.215 | 7 - Pending Application          |
| 2 - Construction Permit              | 8 - Petition For Reconsideration |
| 3 - Channel Deletion Proposed        | 9 - Proposed Rulemaking          |
| 4 - Move From This Channel Ordered   | 10 - Rulemaking Petition         |
| 5 - Move to This Channel Ordered     | 11 - Short-Spaced                |
| 6 - One Step Reference Site          | 12 - Vacant Allotment            |

TABLE 1.1(b)

## FM ALLOCATION STUDY - CHANNEL 276A (103.1 MHz) - ROLLA, MO

-----  
 FOR HIM ENTERPRISES, LLC  
 POTOSI, MO

STUDY COORDINATES: 37/52/39 91/44/45

STATION	LOCATION	CHANNEL	CLASS	SPACING (km)	REQUIRED SPACING* (km)	NOTES
WIL-FM	ST. LOUIS, MO	222	C	135.84	25.0	
ALLOTMENT	MOUNTAIN GROVE, MO	223	A	93.65	10.0	12
KELE-FM	MOUNTAIN GROVE, MO	223	A	93.65	10.0	7
KRDY	WEST PLAINS, MO	273	C2	132.52	55.0	
KEZK-FM	ST. LOUIS, MO	273	C	145.44	95.0	
KQUL	LAKE OZARK, MO	274	A	74.95	31.0	
KMNO-FM	MARSHALL, MO	275	C1	189.84	133.0	
KMNO-FM	MARSHALL, MO	275	C1	193.56	133.0	1, 2
KEZS-FM	CAPE GIRARDEAU, MO	275	C1	199.69	133.0	
KHOZ-FM	HARRISON, AR	275	C1	200.17	133.0	
BNPH20041230AD	LINN, MO	276	A	70.05	115.0	2, 3, 11
RM10167	EMINENCE, MO	276	C3	80.47	142.0	3, 10, 11
KLOU	ST. LOUIS, MO	277	C1	145.92	133.0	
KLOU	ST. LOUIS, MO	277	C1	145.44	133.0	2
KWOZ	MOUNTAIN VIEW, AR	277	C	233.01	165.0	
KLUE	POPLAR BLUFF, MO	278	C2	159.65	55.0	
KJEL	LEBANON, MO	279	C	88.40	95.0	3, 11
KJEL	LEBANON, MO	279	C	88.40	95.0	3, 7, 11
KJEL	LEBANON, MO	279	C0	88.40	86.0	9

\* Required Spacing Per Section 73.207 of The FCC Rules

TABLE 1.1(b) (cont'd)

FM ALLOCATION STUDY - CHANNEL 276A (103.1 MHz) - ROLLA, MO  
 FOR HIM ENTERPRISES, LLC  
 POTOSI, MO

- Notes:
- |                                      |                                  |
|--------------------------------------|----------------------------------|
| 1 - Applied For Under Section 73.215 | 7 - Pending Application          |
| 2 - Construction Permit              | 8 - Petition For Reconsideration |
| 3 - Channel Deletion Proposed        | 9 - Proposed Rulemaking          |
| 4 - Move From This Channel Ordered   | 10 - Rulemaking Petition         |
| 5 - Move to This Channel Ordered     | 11 - Short-Spaced                |
| 6 - One Step Reference Site          | 12 - Vacant Allotment            |

TABLE 1.2

## FM ALLOCATION STUDY - CHANNEL 248A (97.5 MHz) - LINN, MO

FOR HIM ENTERPRISES, LLC  
POTOSI, MO

STUDY COORDINATES: 38/29/57 91/53/80

STATION	LOCATION	CHANNEL	CLASS	SPACING (km)	REQUIRED SPACING* (km)	NOTES
KUPH	MOUNTAIN VIEW, MO	245	C2	167.53	55.0	
KPTK	FLORISSANT, MO	246	C1	105.23	75.0	
KAYO	WARSAW, MO	246	A	126.72	31.0	1
ALLOTMENT	MADISON, MO	247	C3	104.42	89.0	12
KXUS	SPRINGFIELD, MO	247	C1	176.93	133.0	
KDAA	ROLLA, MO	248	A	60.31	115.0	1, 3, 11
KDAA	ROLLA, MO	248	A	70.05	115.0	1, 2, 3, 11
WBBA-FM	PITTSFIELD, IL	248	B1	152.54	143.0	
WBBA-FM	PITTSFIELD, IL	248	B1	152.73	143.0	2
KDEA	DONIPHAN, MO	248	C2	231.93	166.0	
KHZR	POTOSI, MO	249	C2	110.65	106.0	9
KHZR	POTOSI, MO	249	C3	114.99	89.0	3
KPCW-FM	LA MONTE, MO	249	C1	135.03	133.0	
KPBD-FM	WAYNESVILLE, MO	250	C3	73.89	42.0	
KICK-FM	PALMYRA, MO	250	C2	143.55	55.0	
KYKY	ST. LOUIS, MO	251	C1	136.12	75.0	

\* Required Spacing Per Section 73.207 of The FCC Rules

## Notes:

- |                                      |                                  |
|--------------------------------------|----------------------------------|
| 1 - Applied For Under Section 73.215 | 7 - Pending Application          |
| 2 - Construction Permit              | 8 - Petition For Reconsideration |
| 3 - Channel Deletion Proposed        | 9 - Proposed Rulemaking          |
| 4 - Move From This Channel Ordered   | 10 - Rulemaking Petition         |
| 5 - Move to This Channel Ordered     | 11 - Short-Spaced                |
| 6 - One Step Reference Site          | 12 - Vacant Allotment            |

TABLE 1.3

## FM ALLOCATION STUDY - CHANNEL 281A (104.1 MHz) - EMINENCE, MO

FOR HIM ENTERPRISES, LLC  
POTOSI, MO

STUDY COORDINATES: 37/14/30 91/26/00

STATION	LOCATION	CHANNEL	CLASS	SPACING (km)	REQUIRED SPACING*	NOTES
KNSX	STEELVILLE, MO	227	C2	101.00	15.0	
KBKG	CORNING, AR	220	C3	115.38	12.0	1, 2
KLUE	POPLAR BLUFF, MO	278	C2	107.30	55.0	
KJEL	LEBANON, MO	279	C	132.69	95.0	3
KJEL	LEBANON, MO	279	C	132.69	95.0	3, 7
KJEL	LEBANON, MO	279	C0	132.69	86.0	9
KTNX	ARCADIA, MO	280	A	75.16	72.0	1, 2
ALLOTMENT	GIDEON, MO	280	A	163.62	72.0	12
BSFH20040006AK	GIDEON, MO	280	A	163.62	72.0	7
BNPH20050103AI	GIDEON, MO	280	A	163.62	72.0	1, 7
KPOC-FM	POCAHONTAS, AR	281	A	115.25	115.0	1
KMHM	LUTESVILLE, MO	281	A	133.73	115.0	
KJMO	JEFFERSON CITY, MO	281	A	161.11	115.0	
KSGF-FM	ASH GROVE, MO	281	C3	199.98	142.0	
WRDA	JERSEYVILLE, IL	281	C2	204.89	166.0	
WTNV	JACKSON, TN	281	C1	292.67	200.0	2
WTNV	JACKSON, TN	281	C1	292.70	200.0	
KDBB	HONNE TERRE, MO	282	A	98.81	72.0	
KXOQ	KENNETT, MO	282	A	154.08	72.0	
KBCN-FM	MARSHALL, AR	282	C	107.19	165.0	
ALLOTMENT	GRANDIN, MO	283	A	71.04	31.0	12
ALLOTMENT	DOOLITTLE, MO	283	A	85.47	31.0	12
KODU	HARDY, AR	284	A	103.99	31.0	
KODU	HARDY, AR	284	A	107.49	31.0	1, 2
KKLH	MARSHFIELD, MO	284	C2	130.72	55.0	

\* Required Spacing Per Section 73.207 of The FCC Rules

TABLE 1.3 (cont'd)

FM ALLOCATION STUDY - CHANNEL 281A (104.1 MHz) - EMINENCE, MO  
-----  
FOR HIM ENTERPRISES, LLC  
POTOSI, MO

Notes:

- |                                      |                                  |
|--------------------------------------|----------------------------------|
| 1 - Applied For Under Section 73.215 | 7 - Pending Application          |
| 2 - Construction Permit              | 8 - Petition For Reconsideration |
| 3 - Channel Deletion Proposed        | 9 - Proposed Rulemaking          |
| 4 - Move From This Channel Ordered   | 10 - Rulemaking Petition         |
| 5 - Move to This Channel Ordered     | 11 - Short-Spaced                |
| 6 - One Step Reference Site          | 12 - Vacant Allotment            |

*Before the  
Federal Communications Commission  
Washington, D. C. 20554*

In the Matter of:	)	
	)	
Reclassification of License of	)	DA 05-1715
FM Station KJEL	)	RM-10567
(Lebanon, Missouri)	)	
	)	
Amendment of §73.202(b),	)	MB Docket No. 01-151
Table of Allotments,	)	RM-10167
FM Broadcast Stations,	)	
(Eminence, Missouri)	)	

TO: Marlene Dortch, Secretary  
Attn: Audio Division

**JOINT PETITION FOR APPROVAL OF AGREEMENT  
AND FOR OTHER RELIEF**

Four Him Enterprises, LLC ("Four Him") and Ozark Broadcasting, Inc. ("Ozark"), by their respective attorneys, hereby jointly request the Audio Division to simultaneously take the following actions:

- A. Approve the Agreement of Settlement attached hereto; and,
- B. Dismiss the application of Ozark (File No. BPH-20030401ABZ) for full Class C facilities at FM Broadcast Station KJEL, Lebanon, Missouri (the "Application"); and,
- C. Reconsider the *Memorandum Opinion and Order* (DA 05-1715), which denied Four Him's Petition for Reconsideration of the denial of its Petition for Rulemaking; and,
- D. Resolve the proceedings in Docket No. 01-151 without allocating Channel 276C3 to Eminence, Missouri and, instead, grant Four Him's Counterproposal, filed September 4, 2001, which proposes to allocate a different channel to Eminence, Missouri.

In support thereof, it is alleged:

1. On June 24, 2005, the Audio Division released a *Memorandum Opinion and Order* (DA 05-1715), denying a Petition for Reconsideration filed by Four Him and directed against a staff letter, rejecting Four Him's Petition for Rulemaking. Four Him is the licensee of Station KHZR, Channel 249C3, Potosi, Missouri. In its Petition for Rulemaking, Four Him proposed the substitution of Channel 249C2 for Channel 249C3 at Potosi and modification of the Station KHZR license to specify operation on Channel 249C2. In order to accommodate this upgrade, Four Him proposed channel substitutions at Rolla and Linn, Missouri. The channel substitution at Rolla required the reclassification of Station KJEL, Channel 279C, Lebanon, Missouri to Channel 279C0.

2. Ozark is the licensee of Station KJEL. Ozark filed the above-described Application for full Class C status for Station KJEL and, because of the filing of that Application, the Audio Division rejected Four Him's Petition for Rulemaking and denied Four Him's Petition for Reconsideration.

3. The FCC has now established a window for settlement in rulemaking proceedings. Acting on that window, Four Him and Ozark have entered into discussions, looking toward an amicable settlement of their differences. An Agreement of Settlement has been reached, a copy of which is attached hereto and marked Exhibit A. Under that Agreement, Ozark will dismiss its application for Class C facilities for Station KJEL and join in requesting the Audio Division to reconsider its action, taken by *Memorandum Opinion and Order*, released June 24, 2005, and grant Four Him's Petition for Rulemaking. In return, Four Him will pay Ozark the sum of One Hundred Thousand



Dollars (\$100,000.00), on the terms and under the conditions specified in the Agreement of Settlement.

4. Ozark has filed a Petition for Rulemaking to add Channel 276C3 to Eminence, Missouri and a *Notice of Proposed Rulemaking* has been issued, looking towards the adoption of that proposal, in Docket No. 01-151. The allocation of Channel 276C3 to Eminence, Missouri is inconsistent with the upgrade proposed by Four Him at Potosi, Missouri. Therefore, as part of the Agreement of Settlement, Ozark has agreed that the proceedings in Docket No. 01-151 should be either terminated without adding Channel 276C3 to Eminence or, in the alternative, that a Counterproposal filed by Four Him to allocate a different channel to Eminence should be granted.

5. Approval of the Agreement of Settlement will serve the public interest. It will forestall the filing of an appeal, directed against the Audio Division's *Memorandum Opinion and Order* of June 24, 2005. It will enable an immediate upgrade in the facilities of Station KHZR, Potosi, Missouri. Thus, it will eliminate the need for further litigation, which would otherwise place a burden on the FCC's staff resources. At the same time, it will provide for improved service to the public from Station KHZR.

6. WHEREFORE, it is respectfully requested that the Audio Division simultaneously take the following actions:

- A. Approve the Agreement of Settlement attached hereto; and,
- B. Dismiss the Application; and,
- C. Reconsider the *Memorandum Opinion and Order* (DA 05-1715), which denied Four Him's Petition for Reconsideration of the denial of its Petition for Rulemaking and grant the Petition for Rulemaking filed by Four Him and described in the aforesaid *Memorandum Opinion and Order*; and,

- D. Resolve the proceedings in Docket No. 01-151 without allocating Channel 276C3 to Eminence, Missouri and, instead, grant Four Him's Counterproposal, filed September 4, 2001, which proposes to allocate a different channel to Eminence, Missouri.

Respectfully submitted,

FOUR HIM ENTERPRISES, LLC

July 25, 2005

GAMMON & GRANGE, PC  
8280 Greensboro Drive  
7<sup>th</sup> Floor  
McLean, VA 22102-3807

By: A. Wray Fitch III  
A. Wray Fitch  
Its Attorney

OZARK BROADCASTING, INC.

Law Office of  
LAUREN A. COLBY  
10 E. Fourth Street  
P.O. Box 113  
Frederick, MD 21705-0113

By: Lauren A. Colby  
Lauren A. Colby  
Its Attorney

## **AGREEMENT OF SETTLEMENT**

Agreement of Settlement, made and entered into this 20<sup>th</sup> day of July, 2005, by and between Four Him Enterprises LLC, a Missouri limited liability company ("Four Him") and Ozark Broadcasting Inc., a Missouri Corporation ("Ozark").

### **WITNESSETH:**

WHEREAS, Four Him holds the license issued by the Federal Communications Commission ("FCC") for station KHZR, channel 249C3 Potosi, Missouri; and

WHEREAS, Four Him filed a Petition for Rulemaking, proposing the substitution of channel 249C2 for channel 249C3 at Potosi and modification of the license of Station KHZR to specify operation on channel 249C2 (RM-10567) (Potosi Rulemaking); and

WHEREAS, in order to accommodate this upgrade, Four Him proposed channel substitutions at Rolla and Linn, Missouri and the channel substitution at Rolla required the reclassification of Ozark's station at Lebanon, Missouri, KJEL, from a full class C station to a class C0 station; and

WHEREAS, Ozark resisted the reclassification of KJEL and filed an application (File No. BPH-20030401ABZ) ("the Application") to retain full class C status for station KJEL; and

WHEREAS, because of the filing of the Application, the Commission staff rejected Four Him's Petition for Rulemaking; and

WHEREAS, Four Him petitioned the Audio Division for reconsideration but, by *Order* (DA05-1715) released June 24, 2005, the Audio Division denied reconsideration; and

WHEREAS, Four Him has a right to appeal the Audio Division's decision to the full commission; and

WHEREAS, the parties desire to forestall the filing of any such appeal and, instead, to settle their differences on an amicable basis;

NOW, THEREFORE, for and in consideration of the mutual promises and covenants set forth herein, it is agreed as follows:

1. **Joint Petition:** Within 5 days of the date of execution of this Agreement, the parties hereto will file a joint petition, asking the FCC's Audio Division to simultaneously do the following:

- a. Approve this Agreement;
- b. Dismiss the Application;
- c. Reconsider the Audio Division's Memorandum Opinion and Order (DA05-1715) (Petition for Reconsideration) and grant of the Potosi Rulemaking; and
- d. Request Commission action in Docket No. 01-151, RM-10167, consistent with the Potosi Rulemaking, requesting dismissal of Ozark's request to allocate Channel 276C3 to Eminence, Missouri, and grant of Four Him's Counterproposal filed September 4, 2001)

The parties will vigorously prosecute the Joint Petition and do all things reasonably necessary and/or appropriate to obtain a grant thereof.

2. **Ozark Consideration:** Ozark agrees to take the following actions:

- a. Request dismissal of the Application.
- b. Request the dismissal of allocation of Channel 276C3 to Eminence, MO, as proposed in Rulemaking Docket Number 01-151 and to support, to the extent necessary, Four Him's Counterproposal in Docket Number 01-151.
- c. Support Four Him's Petition for Reconsideration and the Potosi Rulemaking.

- d. Consent to modification of the KJEL(FM) license to specify operation as a Class C0 station or Channel 279C0 Lebanon, MO.

3. **Four Him Consideration:** Four Him agrees to pay Ozark the sum of \$100,000 conditioned on approval of this Agreement and the Potosi Rulemaking allowing KHZR to specify operation on Channel 249C2, Potosi, MO. Payment of the \$100,000 shall be made as follows:

- a. Four Him will deposit \$20,000 in an Escrow Account in the SunTrust Bank in Frederick, Maryland, within ten days of this Agreement. The Escrow Deposit shall be held pursuant to the terms of the Escrow Agreement as provided in Exhibit 1. Four Him will authorize release of the Escrow Deposit to Ozark on grant of the Potosi Rulemaking.
- b. In addition, Four Him shall deliver to Ozark on grant of the Rulemaking a Promissory Note, in form and substance reasonably satisfactory to Ozark, in the amount of \$80,000 bearing interest at the rate of prime plus one percentage point. The Note shall be payable in equal monthly installments of principal and interest over 60 months. The interest rate shall be adjusted every 6 months. The Note shall provide for no penalty in the event of early payment. The Note shall be secured by a security interest and all the personal property owned by Four Him used or useful in the operation of KHZR including, to the maximum extent permitted by law, the station license. Such security interests will be evidenced by the filing of the UCC-1 Form. Ozark acknowledges that its security interest may be subordinate.

4. **Termination:** Either party may terminate this Agreement if the Settlement Agreement and/or the Rulemaking has not been granted within 2 years of the date of this Agreement, provided however, Four Him may in the event Ozark elects to terminate this Agreement, pay the consideration provided in Section 3 and this Agreement shall continue in full force and effect.

5. **Missouri Contract:** This Agreement is a Missouri contract and shall

be construed and interpreted in accordance with the laws of that state (other than laws relating to conflict of laws).

6. **Counterparts**: This Agreement may be executed in counterpart and/or by telecopy and, when so executed, the counterparts, taken together, shall constitute a complete and binding agreement.

7. **Notices**: Any notices required or permitted by this Agreement shall be deemed complete when sent by overnight courier addressed as follows:

If to Ozark:	David Shepherd Ozark Broadcasting, Inc. 300 West Reed Moberly, Missouri 65270
--------------	--

With a copy to:	Lauren A. Colby, Esquire 10 East 4th Street Frederick, Maryland 21701
-----------------	---

If to Four Him:	Michael Fallon, Member Four Him Enterprises LLC 4600 Executive Centre Parkway Suite A St. Peters, Missouri 63376
-----------------	--

With a copy to:	A. Wray Fitch III 8280 Greensboro Drive 7 <sup>th</sup> Floor McLean, Virginia 22102
-----------------	---

IN WITNESS WHEREOF, the parties to this Agreement have set their hand and seals, and/or the hand and seals of their authorized representative, as of the date first above written.

**OZARK BROADCASTING, INC.**

By: \_\_\_\_\_  
David Shepherd, President

**FOUR HIM ENTERPRISES LLC**

By: \_\_\_\_\_  
Michael Fallon, Member

IN WITNESS WHEREOF, the parties to this Agreement have set their  
hand and seals, and/or the hand and seals of their authorized representative, as of the date  
first above written.

DEARK BROADCASTING, INC.

By: \_\_\_\_\_



David Shepherd, President

FOUR HIM ENTERPRISES LLC

By: \_\_\_\_\_

Michael Fallon, Member



IN WITNESS WHEREOF, the parties to this Agreement have set their  
hand and seals, and/or the hand and seals of their authorized representative, as of the date  
first above written.

**OZARK BROADCASTING, INC.**

By: \_\_\_\_\_  
David Shephard, President

**FOUR HIM ENTERPRISES LLC**

By: Matthew Bross  
Michael Fallon, Member  
MATTHEW BROSS